



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1994

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR94-279

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26148.

The Houston Police Department (the "department") received an open records request for certain police offense reports that you contend come under the protection of section 552.103(a) of the Government Code.¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, you have submitted to this office an affidavit executed by an assistant district attorney for Harris County attesting to the fact that the requested offense reports "relate" to the criminal prosecution of an individual who is standing trial for the alleged murder of a police officer. After reviewing the documents at issue, this office has determined that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The department therefore may withhold the requested records.

In reaching this conclusion, however, we assume that the criminal defendant previously has not had access to the records at issue, e.g., a copy of statements that he made to police investigators; absent special circumstances, once a governmental body has released information to all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the criminal defendant or his attorney has seen or had

¹You state, however, that the department has released to the requestor the "public release portions" of these offense reports. See generally Open Records Decision No. 127 (1976) at 3-4.

access to any of the information in these records, the department no longer can justify withholding that information from the requestor pursuant to section 552.103(a). We also note that section 552.103(a) does not apply once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RWP/rho

Ref.: ID# 26148

cc: Mr. Michael Harkins
Legal Services Unit
Houston Police Department
61 Riesner
Houston, Texas 77002
(w/enclosures)

Mr. S. K. Bardwell
Houston Chronicle
P.O. Box 4260
Houston, Texas 77210
(w/o enclosures)

²You also have asked whether pursuant to section 552.101 of the Government Code the department may redact the name of a witness on one of the documents should the document become releasable in the future. Because we have determined that the department need not release the requested documents at the present time, we do not consider whether, in response to this particular request, the department may withhold the name of the witness. Should the department receive a request for the name of the witness once the litigation has ended, we will consider whether section 552.101 authorizes the department to withhold this name, if you raise the exception.